

CHONG KOK WENG & ANOR

a

v.

WING WAH TRAVEL AGENCY SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR

b

ABDUL AZIZ MOHAMAD J

[CIVIL SUIT NOS: P531/81 & P532/81]

15 JANUARY 2003

TORT: *Negligence - Duty of care - Whether first defendant's employees owed duty of care to deceased couple - Whether duty of care breached*

c

CONTRACT: *Breach - Action for damages - Whether there was breach of contract - Whether exemption clause applicable - Whether deaths of deceased couple a direct consequence of breach*

TORT: *Negligence - Duty of care - Whether first defendant breached duty of care towards deceased couple - Whether deaths of deceased couple a foreseeable consequence of breach*

d

These were two actions brought under ss. 7 and 8 of the Civil Law Act 1956 by the joint administrator and administratrix ('the plaintiffs') of the estates of Chong Kit Yin and Chui Mui Lim ('the deceased couple') to recover damages arising from their deaths in Seoul on 16 October 1978 while on a full-package group tour which they had bought from the first defendant ('Wing Wah'). The second defendant ('KAL') provided them air carriage from Tokyo to Seoul, where they met their deaths. The plaintiffs' causes of action against Wing Wah were for breach of contract and negligence, and that against KAL was for negligence.

e

f

Held:

[1] On the facts, in respect of the plaintiffs' contention that the KAL employees owed a duty of care as a result of their conduct towards the deceased couple, the corollary was that if the KAL employees had left the deceased couple to their fate at the restaurant, they would have owed no duty of care to the deceased couple. To find that a duty of care arose in such circumstances was to propose that the greater the lengths one went to in endeavouring to help someone, the greater the liability to be attached with a duty of care to him to ensure, as a matter of undertaking, that the help given ended in safety. No authority had been cited for such a proposition; it was unacceptable because it would discourage the rendering of succour to those in distress. (pp 415 h & 416 a-c)

g

h

i

- a* [1a] On the facts, with regards to whether there was a breach of the duty of care, there was no evidence that the KAL employees knew or should have known that the Eun-ha Inn was not safe for accommodation. On the contrary, the evidence of the police report as to the cause of the presence of carbon monoxide in the fateful room of the inn was *prima facie* proof that those employees could not have known that there was carbon monoxide in one of the rooms of the inn. Therefore, the plaintiffs had not proved that the KAL employees owed the suggested duty of care to the deceased couple and that, even if they did, they had not breached it. (p 416 d-f)
- b*
- c* [2] On the facts, there were two factors that operated to prevent a reception for the deceased couple at the airport and in accommodating them at the Eun-ha Inn, namely the non-receipt in time of Wing Wah's communication about the change of flight and the information by KAL that the group was not on flight KE 001. Those factors were beyond Wing Wah's control and the exemption clause in Wing Wah's holiday brochure applied to render it not liable for the consequences thereof on the deceased couple. The deaths of the deceased couple were far from being a direct consequence of the breaches. Their deaths were caused by an entirely alien factor which was the presence of carbon monoxide in the inn owing to circumstances that had been set out as related in the police report. Therefore, the plaintiffs' claim against Wing Wah for breach of contract failed. (p 419 a-g)
- d*
- e*
- f* [3] On the facts, the plaintiffs had failed to prove that Wing Wah had breached its duty of care. The case of negligence against Wing Wah would, in any case, have failed, even if there was a breach of duty of care on their part, as the deaths of the deceased couple were not a reasonably foreseeable consequence of the breach. (p 421 a)

[Plaintiffs' claims dismissed.]

g **Legislation referred to:**

Civil Law Act 1956, ss. 7, 8

For the plaintiffs - Jagjit Singh; M/s Jagjit Singh & Co

For the 1st defendant - RD Rajasingam (Premshangar Venugopal & Muralidharan Balan Pillai); M/s Lewis & Co

h *For the 2nd defendant - S Radhakrishnan (Shanti Mogan); M/s Shearn Delamore & Co*

Reported by Suresh Nathan

i

JUDGMENT

Abdul Aziz Mohamad J:

These two actions are brought under ss. 7 and 8 of the Civil Law Act 1956 by the joint administrator and administratrix of the estates of Chong Kit Yin and Chung Mui Lim to recover damages arising from their deaths in Seoul on 16 October 1978 while on a full-package group tour which they had bought from the first defendants (“Wing Wah”). It was a round tour which had taken them from Kuala Lumpur to Taipei, Hualien, Osaka and Tokyo. The second defendants (“KAL”) provided them air carriage from Tokyo to Seoul, where they met their deaths, if not for which their itinerary would have taken them next to Hong Kong and from there back to Kuala Lumpur. They were husband and wife, Chung Mui Lim being the wife. I shall refer to them as “the deceased couple”.

As maintained by the end of the trial, the causes of action against Wing Wah are breach of contract and negligence and that against KAL is negligence.

For the flight from Tokyo to Seoul, the tour group of twenty-three, including the deceased couple, was originally booked on KAL’s flight KE 704, scheduled to depart from Tokyo at 1.30pm and to arrive at Seoul at 3.40pm on 15 October 1978, but before its members left Kuala Lumpur on the tour, their tickets were endorsed with confirmation of change of flight to flight KE 001, scheduled to depart from Tokyo at 5.30pm and to arrive at Seoul at 7.30pm on the same day.

Wing Wah knew when booking the flight that there would be a curfew in Seoul from the midnight at the close of 15 October, but they were satisfied that, even allowing for some take-off delay at Tokyo, the group would have sufficient time to clear customs and reach before midnight the Sheraton Walker Hill Hotel (“the Sheraton”) in Seoul where accommodation had been booked for its stay.

On 29 September the KAL office in Kuala Lumpur telexed to the KAL offices in Tokyo and Seoul information as to the group’s travel itinerary, which included the information that the group would be travelling from Tokyo to Seoul on 15 October on KE 001, that the group would be staying in Seoul at the Sheraton and that Wing Wah’s handling or ground agent in Seoul for the group was Lotte Travel Service Ltd (“Lotte”). Wing Wah’s witness, Ng Lay Tin, said that it was the practice with all airlines to provide such information service for a tour agency where tour groups were concerned, so that, for instance as in this case, KAL in Seoul could inform Lotte of any change in the time of arrival.

- a* On 3 October Wing Wah wrote to Lotte to inform them that the group of twenty-three, which was given the number WWT 0310, would be travelling from Tokyo to Seoul on 15 October on KE 001, but Lotte were not to receive the message, which was air-mailed and postmarked 4 October, until 18 October, and the group and Lotte were fated not to meet in Seoul on 15 October.
- b* What happened on Lotte's side was related by Mr Wu, Shyuz-Bin an assistant manager of Lotte's in charge of the group, and Wing Wah's witness. Not having received information about the change of flight from KE 704 to KE 001, and acting on the information he had that the group would be arriving on flight KE 704 at 3.40pm, he appointed a tour guide, Miss Woo, Young Li, to welcome the group at Seoul's Kimpo Airport. A motor-coach was also sent to the airport to transport the group to the Sheraton.
- c*
- At 6pm Miss Woo telephoned Mr Wu to say that since she arrived at the airport at 3.20pm she had not sighted the group. Mr Wu, knowing that there would be another KAL flight from Tokyo, flight KE 001, made enquiries with KAL in Seoul about the group and was informed that the flight would land at 8.15pm but that the group was not on the flight. Mr Wu also attempted to communicate by telephone with Wing Wah in Kuala Lumpur but was not successful.
- d*
- e* Mr Wu told Miss Woo, who had been telephoning Mr Wu several times, to wait for Cathay Pacific flight CX 450 in case the group should be on it. Miss Woo telephoned at 8pm to say that the group was not on it. Mr Wu then told Miss Woo to leave the airport with the coach and go home and wait for his call. Mr Wu explained in evidence that he did not ask Miss Woo to await the arrival of KE 001 at 8.15pm because he believed from the information which he said he had obtained from KAL that the group was not on it.
- f*
- The fact was that the group arrived at the airport at about 8.26pm on flight KE 001 after Miss Woo presumably had left. It did not arrive at 7.30pm as originally scheduled because there had been a delay in departure at Tokyo. Had Mr Wu not had such a complete trust in the information that he said he received from KAL in Seoul that the group was not on the flight, he would, judging from his explanation, have asked Miss Woo to wait for flight KE 001, and the group, unless fated otherwise, would have been met at the airport and transported to the Sheraton.
- g*
- h* The rest of Mr Wu's narrative concerns his efforts to find the group. Not receiving further information about the group, he left his office at about 9.40pm for home with instructions to the night-duty officer to contact Mr NT Lee, Lotte's assistant general manager, if anything should turn up about the group before he reached home.
- i*

At 10.40pm Mr Lee telephoned Mr Wu at his house to say that he had received a call from the tour leader, Miss Jenny (Chan Yan), from the airport and to instruct Mr Wu to get a coach and tour guide ready. Mr Wu telephoned the depot to ask for a coach and driver to be got ready but the depot later telephoned him to say that no driver was available everyone had gone home because of the curfew which was coming at midnight. At 11.05pm Mr Lee telephoned Mr Wu again with instructions to go immediately to meet the group who was then at the restaurant outside the main gate of the airport. Mr Wu took a taxi to the depot, arriving at 11.15pm. A coach was waiting. He drove it to the restaurant. When he arrived at 11.50pm. at the restaurant, he found it was closed and in darkness. After looking around he did not find anybody there. The curfew had started, but he made enquiries at the nearby police station, he went to the airport terminal, he made calls to hotels in the vicinity of the airport and in the city, including the Sheraton, but he failed to locate the group. He waited in the coach near the police station until 4am, when the curfew ended, and made a search from hotel to hotel. Finally he returned the coach to the depot at 8am.

That is the outline of Mr Wu's evidence.

What befell the group was related by Mr Kim Pong Ok, KAL's witness, who was then a supervisor in the departure hall at Kimpo Airport. After the airport had closed at 10pm he was on his way home when he was stopped by an airport policeman who asked him to take some stranded passengers out of the airport and leave them at the Koryo Jeong Restaurant, which was in front of the front gate of the airport, where a coach from Lotte, whom the policeman said he had contacted, would come and pick them up. So they were transported to the restaurant in a KAL commuter bus, in which were also four KAL staff, including Mr Kim. They arrived at the restaurant at about 11.25pm. The restaurant was closed. The Lotte coach was not there. They waited for the coach. Because everyone was tired and the children were feeling cold, Mr. Kim prevailed upon the restaurant to let them in, which they did. Mr Kim went out on foot to inquire about hotel accommodation, but no rooms were available. He came back to the restaurant, when the tour leader suggested that enquiries be made at nearby inns. Mr Kim and two colleagues went on foot to the inns. At last they found an inn, the Eun-ha Inn, which had six rooms available. The tour leader agreed to go there. So they all went to the inn, which was about fifty metres from the restaurant, on foot arriving at about 12.15am on 16 October. Mr Kim told one of his colleagues to ask the police station to inform the Lotte coach-driver of the whereabouts of the group. So rooms were secured for the group at the inn for the night. Mr Kim and his colleagues could not go home because of the curfew. They had to stay at another inn because there was no more room at the Eun-ha Inn.

a After the group had checked in at the inn, one of Mr Kim's colleagues telephoned Lotte from the inn to inform them that the group was at the inn, but Mr Kim could not remember the time of the call.

b At about 6.00 am on 16 October, Mr Kim was back at the inn. Shortly afterwards, four persons occupying one room were found unconscious in the room with symptoms of gas intoxication.

That is the outline of Mr Kim's evidence.

c Two of the four persons were the deceased couple. The cause of their deaths was certified to be coal briquet carbon monoxide gas poisoning.

d As I feel that it is fitting at this stage to state straight away what caused the carbon monoxide poisoning, and as the cause is to be found in certain evidence that the plaintiffs in their written submission seek to use against KAL, I shall proceed to deal first with that evidence and then with the plaintiffs' case against KAL, which is only one of negligence, the plaintiffs having decided not to pursue with the pleaded cause based on breach of contract.

e The plaintiffs have not called any witnesses to testify as to the happenings in the night between 15 and 16 October 1978. They therefore seek to rely on three reports as being more reliable than the evidence of Mr Kim Pong Ok. P4 is the report dated 19 October 1978 to Wisma Putra the Malaysian Ministry of Foreign Affairs, from Encik Mohd Noor bin Hashim, one of the witnesses for the plaintiffs, who was then the Third Secretary, Administration and Consular, at the Malaysian Embassy in Seoul. The report was prepared from interviews with certain personnel of Lotte, of Wing Wah (including the tour leader, Miss Chan Van), of the Korean Tourist Association, of KAL, and of the police station at the airport. P5 is Lotte's statement to the Malaysian Embassy, dated 18 October 1978. In bundle P9 is an undated report from Miss Chan Yan, the tour leader and Wing Wah's employee. Those are the three reports that the plaintiffs seek to rely on. Bundle P9 is a bundle of documents that the second plaintiff received from Wisma Putra.

g The plaintiffs also produced P7, which is a letter dated 26 October 1978 from Encik Mohd Noor to Wisma Putra forwarding, among other things, a copy of the police report from the Kangso-gu Police Station and the passports and personal effects of the deceased couple, and giving certain additional information. The police report is one of the documents in bundle P9. It was admitted by consent as P11 A-C, because it consists of three sheets or parts, each entitled, as translated, "Fact of Crime", Sec notes, p. 26C. It contains information about the cause of the presence of carbon monoxide in the inn.

i

Those reports and letter are hearsay, in that they are, or are based on, statements of persons who did not appear and testify. To the best of my recollection, they were admitted as exhibits on the understanding that the admissibility or probative value of their contents would be subject to submission and consideration. In para. 4.2.2 of their written submission, the plaintiffs give reasons why the evidence contained in exhs. P4, P5 and P9 should be preferred to the evidence of Kim Pong Ok, but they have not suggested any legal ground or principle that would justify the admission of the contents of the documents as evidence. As far as those contents are sought to be used as evidence adverse to KAL. I am not able to see how in law I could justify their admission as evidence. I therefore rule that they are inadmissible in evidence as evidence against the interests of KAL, but as regards the cause of the presence of carbon monoxide in the inn that is given in the police report, I shall accept it as evidence on the basis that, it being evidence produced by the plaintiffs themselves which, as will later be seen, is detrimental to them, it is an admission against their interests on their part.

It is not easy to get a clear understanding from the English translation of the three “Fact of Crime” documents P11 A-C of what actually happened but it would appear that the operators of the inn had had the heating system of the room in question changed “from roller style coal briquet fireplace to hot water circulation style”, but the finishing work that had to be done to the room after the change had been of an inferior quality so that, in the cement finishing beside a water tank and at both sides of a window, there were cracks through which carbon monoxide gas seeped into the room.

Even if the contents of exhs. P4, P5 and P9 were to be admitted as evidence, from the plaintiffs’ written submission it appears that the evidence from those exhibits that the plaintiffs seek to rely on is only evidence that the employees of KAL, who were involved in transporting the tour group from the airport to the restaurant, knew that its members were to be accommodated at the Sheraton as against the evidence of Mr Kim Pong Ok that none of them, not even the tour leader, knew where the group was to be accommodated. But, as I shall subsequently show, the plaintiffs in their written submission make but unavailing use of the evidence of that knowledge to establish KAL’s liability in negligence.

Reading their written submission, I get a distinct impression that the plaintiffs are not certain as to how to formulate a duty of care on the part of KAL. Nowhere previously in their written submission do they expressly say that KAL owed a duty of care to the deceased couple to transport them to the Sheraton, but in para. 4.3.8 they argue that even if the KAL’s employees did not know that the tour group was to be accommodated at the Sheraton, those employees’ conduct in waiting at the restaurant with the group, in searching for

- a* accommodation for its members and in eventually housing them at the Eun-ha Inn suggest an undertaking by those employees to act in the best interests of the deceased couple. They therefore conclude in para. 4.3.9 that those employees of KAL owed a duty of care to the deceased couple to ensure that they were accommodated at a place or hotel that was safe for habitation. The corollary
- b* is that if the KAL's employees had left the group to their fate at the restaurant, they would have owed no duty of care to the deceased couple. To find that a duty of care arises in such circumstances is to propose that the greater the lengths one goes to in endeavouring to help someone, the greater is one's liability to be attached with a duty of care to him to ensure, as a matter of
- c* undertaking, that the help given ends in safety. No authority has been cited for such a proposition and it does not strike me as a correct proposition. It is unacceptable because it would discourage the rendering of succour to those in distress.

- d* As to where the breach in such duty of care lay, in para. 4.3.10 of their written submission the plaintiffs claim that it lay in the KAL employees' accommodating the deceased at the Eun-ha Inn when they knew or should have known that it was not safe for accommodation. There is no evidence that the KAL employees knew or should have known that it was not a safe accommodation. On the contrary, the evidence of the police report as to the cause of the presence of
- e* carbon monoxide in the fateful room of the inn – and this is why I said that the evidence is adverse to the plaintiffs' interests – is *prima facie* proof that those employees could not have known that there was or was going to be presence of carbon monoxide in one of the rooms of the inn. In fact, there is evidence that those employees themselves, or some of them, would have stayed
- f* at the inn too had there been any more room to accommodate them.

- I find, therefore, that the plaintiffs have not proved that the KAL's employees owed the suggested duty of care to the deceased couple and that, even if they did owe such a duty of care, they had not breached it. Therefore it follows in any event that the plaintiffs have failed to prove their case against KAL. Let
- g* me, however, state how the plaintiffs seek to make KAL vicariously liable for those employees. In para. 4.4.2 they accept that the employees were 'technically "off-duty"' but they maintain that nevertheless they were acting in the course of their employment. Their reason for so maintaining is given in para. 4.4.3, where they reason that since the arrival of flight KE 001 was delayed by one
- h* hour and the curfew was going to begin at midnight, "it was the responsibility of the 2nd defendant as an Airline to provide transportation for the passengers to their hotel" and therefore KAL would have authorised the acts of the employees in searching for accommodation for the group, making them acts in

i

the course of employment. The words as to responsibility that I have placed in quotes are the foundation on which the conclusion as to authorisation is based. It is in those words as to responsibility that is to be found a faint indication of an attempt to make use of the evidence of knowledge on the part of those KAL employees that the group was to be accommodated at the Sheraton, that is the evidence from the reports and letter that I said before are inadmissible. But the plaintiffs have not argued on what legal principle would such a responsibility arise in those circumstances. If there was no such responsibility in normal circumstances, on what legal principle would such a responsibility arise in the given circumstances? The foundation for the conclusion as to authorisation is an unsound foundation and the conclusion on which it is based cannot stand.

In para. 4.4.5 of their written submission the plaintiffs seem to attempt another ground on which to found liability on KAL's part. I quote the paragraph:

Yang Arif, it is our submission that the employees of the 2 Defendant were guilty of professional incompetence in that the Employees had misinformed Lotte Travel Services that the said 23 Passengers, including both the Deceased Persons could not be located on the Flight Passenger List *albeit* the 2nd Defendant, *vide* Exhibit 2 ABD para 7 had been informed by the Korean Airlines Reservation Department in Kuala Lumpur of the Names of the Passengers on Korean Airlines Flight No. KE 001, the telephone number of its Overseas Agent and the Hotel that the group had reservations in.

The plaintiffs, however, do not say whether their case arising from the misinformation is also a case of negligence and they have not argued how the requirements for the tort of negligence based on the misinformation have been satisfied. At any rate no case based on the alleged misinformation has been pleaded. For those reasons I shall not take it into consideration.

I conclude that the plaintiffs have failed to prove their claim against KAL and the claim must be dismissed.

I turn now to consider the plaintiffs' case against Wing Wah which as I have said, is one of breach of contract and negligence.

As for breach of contract, it is not disputed that the contract, which in the statement of claim is termed "Tour Agreement", comprised Wing Wah's holiday brochure entitled "Wing Wah Holidays" (exh. P1 and itinerary (B) therein. The brochure contains the following exemption clause:

Wing Wah Travel Agency Sdn Bhd and its Associates or Agents **acts only in the capacity of an agent** upon the legal conditions that while exercising every possible care in making the tour arrangements, **it shall not be liable**

- a* **for any injury**, damage loss, additional expenses, accidental delay or other irregularity *which may be caused either through* wilful or negligent acts or commission **on the part of companies or individuals providing or engaged in transportation**, accommodation or other services relating to the execution of the tour **or through** natural calamities or Government Regulations, strikes and **other factors beyond its control**. (emphasis added).

- b*
- In their written submission the plaintiffs argue that Wing Wah committed two breaches of contract. One was in the belated arrival of flight KE 001 at Kimpo Airport at 8.26pm instead of at 7.30pm as scheduled. The second breach was in the absence of reception for the deceased couple at the airport and in
- c* accommodating them at the Eun-ha Inn. See paras. 3.1.3 and 3.1.4. The breach alleged in para. 3.1.4, that is the second breach, is founded on a term of the tour agreement, as alleged in para. 3.1.2 (b), that:

- d* Both the Deceased Persons ... would be received on arrival in Seoul Airport and transported to and be accomodated [sic] in the ... Walker Hill Sheraton Hotel.

- e*
- I shall deal with the second alleged breach first. The term stated in that paragraph did not materialise. The deceased couple were not received on arrival at the airport and they were not accommodated at the Sheraton but that was not because of any lack of arrangement on Wing Wah's part. Arrangements
- f* had been made for Lotte to receive the group at the airport and Lotte did go to the airport to receive it. Arrangements had also been made for its accommodation at the Sheraton. The arrangements did not materialise for the group and the deceased couple because Wing Wah's communication to Lotte about the group's change of flight from Tokyo was not received in time by
- g* Lotte. As has been related, it was sent on 4 October but received by Lotte only on 18 October, three days after the event. Had Lotte received the information, Miss Woo would have been sent to the airport with flight KE 001 in mind, and although in the event it was delayed Miss Woo would have waited for its eventual arrival. She would have met the group, and the group,
- h* in good time, would have been transported to the Sheraton and accommodated there. As it was, although Mr Wu knew that there would be a flight KE 001 on that day, he did not know that the group was on that flight and he did not instruct Miss Woo to wait for that flight in case the group should be on it because he had been informed in his enquiries with KAL that the group was
- i* not on the flight. I have no doubt, after hearing the evidence of Mr Wu, that he had done everything possible that night to trace the group and that there was no failure on his or Lotte's part that he was trying to conceal. I therefore accept his evidence that he made enquiries about flight KE 001 and was informed that the group was not on the flight.

There were, therefore, two factors that operated to prevent Lotte meeting the group at the airport, namely the non-receipt in time of Wing Wah's communication about change of flight and Mr. Wu's being informed by KAL that the group was not on flight KE 001. Those factors were factors beyond Wing Wah's control and the exemption clause applies to render them not liable for the consequences thereof on the deceased couple.

It may be suggested as a matter of breach of contract, because it is raised in the submission as to negligence, that Mr Wu should not have believed the information that the group was not on the flight and should still, despite the information, have instructed Miss Woo to wait for flight KE 001. One reason for the suggestion may be that Mr Wu, a man of great experience in the tour business, had obtained the information from a KAL source that was not properly in a position to give the information. I believe that Mr Wu cannot be faulted. I believe that with his experience, he reasonably believed the information to be true and, so believing, it was pointless for him to ask Miss Woo to still wait for flight KE 001. But even if there was any blameworthy failure of judgment on Mr Wu's part, the exemption clause applies to render Wing Wah not liable for its consequences on the deceased couple. According to the exemption clause. Lotte, Mr Wu's employer, and Mr Wu were a company and individual "providing or engaged in transportation relating to the execution of the tour".

As to the delay in flight KE 001, Wing Wah clearly cannot be liable for it because, according to the exemption clause, it was a circumstance beyond their control and also, if it was KAL's fault, it was the fault of a company "providing or engaged in transportation".

In para. 3.1.12 of their written submission the plaintiffs argue that Wing Wah would be liable for the loss of the lives of the deceased couple since their deaths "were a direct consequence of the 1st defendants' breach of the said tour agreement". If the group's delayed arrival in Seoul and their not being met by Lotte at the airport constituted breaches of the tour agreement on the part of Wing Wah, in my judgment the deaths of the deceased couple were far from being a direct consequence of the breaches. Their deaths were caused by an entirely alien factor, that is the presence of carbon monoxide in the inn owing to circumstances that have been set out as related in the police report.

For those reasons, the plaintiffs fail against Wing Wah on breach of contract. I proceed now to consider the plaintiffs' case against Wing Wah for the tort of negligence.

- a* In para. 3.2.3 of their written submission, the plaintiffs state Wing Wah's duty of care to the deceased couple as "a tortious duty of care as to both the deceased's safety in the carrying out of the tour agreement ...". Paragraph 3.2.5(a) alleges, as a breach of that duty, failure to ensure that the deceased couple arrived in Seoul at 3.20pm and causing them to arrive at 8.26pm without proper arrangement being made for their accommodation in Seoul. As has been seen, 3.40pm would have been the arrival time of the original flight KE 704, but the flight had been changed before the tour started to KE 001, originally due to arrive in Seoul at 7.30pm. Any delay in flight should not be answerable for by Wing Wah because they had no control over flights and flight operation.
- b*
- c* As to accommodation, proper arrangements had been made for accommodation at the Sheraton.

- Another breach is alleged in para. 3.2.5(b), that is failure to accommodate the deceased couple at the Sheraton but instead causing them to be accommodated at the Eun-ha Inn "which the 1st defendants knew or ought to have known was not safe for accommodation".
- d* I reject the allegation that Wing Wah knew or ought to have known that the inn was not safe for accommodation. That allegation could only be made on the basis that it was the tour leader, Miss Chan Van, Wing Wah's employee who caused the group to be accommodated at the inn when she knew or ought to have known that it was not safe for accommodation.
- e* For the same reasons that I gave in respect of KAL, I reject the allegation that the tour leader knew or would have known of the presence of carbon monoxide in the room that the deceased couple were to occupy.

- In para. 3.2.6 the plaintiffs allege breach of Wing Wah's duty of care in that they failed to make adequate arrangements with Lotte to ensure the deceased couple were met on arrival in Seoul and transported to the Sheraton. I find there was no failure in that respect because the evidence is that Wing Wah had done all that was reasonable to ensure that the deceased couple were met on arrival, but their letter informing Lotte of the change of flight was not received by Lotte before the event.
- f*

- g* In paras. 3.2.7 and 3.2.8 there is an allegation of professional negligence on the part of Lotte, for which Wing Wah are said to be vicariously liable, in that, even though KAL had told Mr Wu that the group was not on flight KE 001, flight KE 001 should nevertheless have been checked. This point is not pleaded and should not be raised. In any event, I have already stated that it was not unreasonable for Mr Wu to believe the information he received from KAL, and believing it, it was not unreasonable for him not to check that flight.
- h*

i

The case of negligence against Wing Wah must in any case fail even though there was breach of duty of care on their part, because the deaths of the deceased couple were not a reasonably foreseeable consequence of the breach.

I dismiss the plaintiffs' claims against Wing Wah and KAL with costs.

a

b

c

d

e

f

g

h

i